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Before the
Federal Communications Commission
Washington, D.C. 20554

Federal Communications Commission
Office of Secretary

ORIGINAL

In the Matter of

Rules and Regulations Implementing the
Telephone Consumer Protection Act of 1991

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CG Docket No. 02-278
CG Docket No. 92-90

REPLY COMMENTS OF
LSSi CORP.

Christy C. Kunin (ckunin@graycary.com)
Patrick O'Connor (poconnor@graycary.com)
Gray Cary Ware & Freidenrich LLP
1625 Massachusetts Ave., N.W., Suite 300
Washington, DC 20036
202.238.7700
202.238.7701 fax

Attorneys for LSSi Corp.

Dated: January 31, 2003

No. of Pages 044
List Attached

Maureen Trimm
The Association for Telecommunications
Professionals in Higher Education
152 West Zandale Drive, Suite 200
Lexington, KY 40503

Chris Jay Hoofnagle
The Electronic Privacy Information
Center, et al
1718 Connecticut Avenue, N.W., Suite 200
Washington, D.C. 20009

Table of Contents

INTRODUCTION	1
DISCUSSION	3
I. Contrary to the suggestion of some commenters. costs of establishing and maintaining the database should not be excessive	3
II. The accuracy concerns expressed by several commenters are unfounded	5
III. Technological developments and advanced data management practices should allay security concerns.....	7
IV. If the Commission moves ahead with the establishment of a national do-not-call database, it should seek to establish a single, unified database that is simple to use.....	9
CONCLUSION	11

John T. Scott, III
Charon J. Hams
Verizon Wireless
1300 I Street, N.W., Suite 400 West
Washington, D.C. 20005

Nessa Feddis
American Bankers Association
1120 Connecticut Avenue, N.W.
Washington, D.C. 20036

Neal Jackson
Dana Davis Rehm
Gregory Lewis
National Public Radio, Inc.
635 Massachusetts Avenue, N.W.
Washington, D.C. 20001

Joel Bernstein
Halprin Temple
555 12th Street, N.W.
Suite 950 N
Washington, D.C. 20004

Susan Grant
National Consumers League
1701 K Street, N.W.
Suite 1200
Washington, D.C. 20006

NASUCA
8300 Colesville Road
Suite 101
Silver Spring, MD 20910

Linda Goldstein
William Heberer
Electronic Retailing Association
Hall, Dickler, Kent, Goldstein & Wood, LLP
909 Third Avenue
New York, NY 10022

William Hawkins, II
Convergys Corporation
201 East Fourth Street
102-2030
Cincinnati, OH 45230

John Hesse, II
Joseph Mariano
Direct Selling Association
1275 Pennsylvania Avenue, N.W., Ste. 800
Washington, D.C. 20004

Amy Healy
Yellow Pages Integrated
Media Association
Two Connell Drive, First Floor
Berkeley Heights, NJ 07922

Elizabeth A. Noel
Sandra Mattavous-Frye
Office of the People's Counsel for the
District of Columbia
1133 15th Street, N.W., Suite 500
Washington, D.C. 20005

Robert S. Tongren
Terry L. Etter
Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, OH 43215

Elissa Matulis Myers
Electronic Retailing Association
2101 Wilson Boulevard, Suite 1002
Arlington, VA 22201

Henry L. Baumann
Jack N. Goodman
Ann W. Bobeck
National Association of Broadcasters
1771 N Street, N.W.
Washington, D.C. 20036

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REPLY COMMENTS OF LSSI CORP.

LSSI Corp. (“LSSI”), by its attorneys, respectfully submits these reply comments in the above-captioned proceeding on the cost and technical feasibility of the proposed national do-not-call database.

INTRODUCTION

On September 18, 2002, the Commission requested comment on proposed revisions to its telemarketing rules,¹ promulgated pursuant to authority granted by Congress in the Telephone Consumer Protection **Act** of 1991.² Among the potential modifications advanced was the establishment of a national do-not-call database to permit telephone subscribers to opt out of solicitation by a broad class of telemarketers.³ **As** a result of increasing consumer concerns over privacy and new practices and technological developments in the telemarketing industry, the

¹ Notice of Proposed Rulemaking, *Rules and Regulations Implementing the TCPA of 1991*, CG Docket No. 02-278, FCC 02-250 (rel. Sept. 18, 2002) (“NPRM”).

² Telephone Consumer Protection **Act** of 1991, Pub. L. No. 102-243, 105 Stat. 2394 (1991), *codified at* 47 U.S.C. § 227 (“**TCPA**”).

³ NPRM ¶8.

Paula Bruening
An Schwartz
The Center for Democracy and Technology
1634 I Street, N.W.
Washington, D.C. 20006

Thomas J. Noto
Ameritrust Mortgage Company
1100 Town & Country Road
Suite 1100
Orange, CA 92686

Erik Huey
Ronald Jacobs
Ameritrust Mortgage Company
Venable, Baetjer, Howard & Civiletti
1201 New York Avenue, N.W., Ste. 1000
Washington, D.C. 20005

Clayton Friedman
Ameritrust Mortgage Company
Baker & McKenzie
One Prudential Plaza
130 East Randolph Drive
Chicago, IL 60601

Ronald Plessner
Paul Jamieson
Piper Rudnick LLP
1200 19th Street, N.W.
Washington, D.C. 20036

Charles Deull
Scholastic, Inc.
555 Broadway
New York, NY 10012

Michelle Cohen
Katherine Calderazzi
Paul, Hastings, Janofsky & Walker, LLP
1299 Pennsylvania Avenue, N.W.
Tenth Floor
Washington, D.C. 20004

Davida Grant
Gary Phillips
Paul Mancini
SBC Communications Inc.
1401 I Street, N.W., Suite 400
Washington, D.C. 20005

David Mills
Scott Dailard
Cox Enterprises, Inc.
Dow, Lohnes & Albertson, PLLC
1200 New Hampshire Avenue, N.W.
Washington, D.C. 20036

Alexander Netchvolodoff
Cox Enterprises, Inc.
1320 19th Street, N.W.
Suite 200
Washington, D.C. 20036

Daniel Brenner
Michael Schooler
National Cable & Telecommunications
Association
1724 Massachusetts Avenue, N.W.
Washington, D.C. 20036

Stephen Earnest
Richard Sbaratta
BellSouth Telecommunications
675 West Peachtree Street, N.E.
Suite 4300
Atlanta, GA 30375

Suzi Ray McClellan
Sara Ferris
Office of Public Utility Counsel
1701 N. Congress Avenue, Suite 9-180
Austin, TX 78711

J.R. Carbonell
Carol L. Tacker
Cingular Wireless LLC
5565 Glenridge Connector, Suite 1700
Atlanta, GA 30342

Commission proposed a re-examination of its previous determination that a national do-not-call database would be too costly and too difficult to administer with the required accuracy.⁴

LSSi, the nation's leading independent provider of directory assistance database services, is one of a select group of commenters who responded to the Commission's request for new information on the economic and technical feasibility of the proposed national do-not-call database.⁵ In LSSi's view, technological developments in the database management industry, when combined with efficiencies that have resulted from increasing competition in the telecommunications sector, make the development and implementation of a national do-not-call database eminently affordable and technically feasible.⁶

Not all commenters agree with this view. Feasibility concerns expressed by commenters to this proceeding generally fell into three categories: cost of establishing and maintaining the database, accuracy of information, and security of the database. While the ultimate cost of the national do-not-call database is unknown, LSSi observes that the bulk of the expense will be incurred in the initial development and registration phases, and there are steps that the Commission can **take** to minimize even that cost; maintenance of the database should not be expensive. Moreover, as an experienced database manager, LSSi notes that technological advances in data scrubbing and advanced database management techniques should allay any fears over the initial and ongoing accuracy of the database. Finally, both technological advances in data security measures and advanced data collection techniques will currently permit cost

⁴ Report and Order, *Rules and Regulations Implementing the TCPA of 1991*, CC Docket NO. 92-90, 7 FCC Rcd 8752, 8760-61, ¶¶ 14-15 (1992) ("TCPA Order").

⁵ Other parties include MBNA America, Magazine Publishers of America, Visa, MasterCard, State Attorneys General, CTIA, Neustar, Call Compliance, Inc., and AT&T Wireless.

⁶ LSSi Comments at 5

Arthur Conway
DialAmerica Marketing, Inc
960 Macarthur Boulevard
Mahwah, NJ 07495

Julie Gackenbach
National Association of Independent
Insurers
444 North Capitol Street, N.W., Suite 801
Washington, D.C. 20001

Robert McNamara
Frank Triveri
Nextel Communications, Inc.
2001 Edmund Halley Drive
Reston, VA 20191

Dennis C. Brown
126/B North Bedford Street
Arlington, VA 22201

Donna Gillin
CMOR, Promoting and Advocating
Survey Research
5507-10 Nesconset Highway, 147
Mount Sinai, NY 11766

Julie Davenport
Household Bank (SB), N.A.
2700 Sanders Road
Prospect Heights, IL 60070

Robert Wientzen
Gerald Cerasale
The Direct Marketing Association, Inc.
1111 19th Street, N.W., Suite 1100
Washington, D.C. 20036

Briana Thibeau
Bernie Mckay
Intuit, Inc.
Dow, Lohnes & Albertson, PLLC
1200 New Hampshire Avenue, N.W
Washington, D.C. 20036

To-Quyen Truong
Scott Dailard
Nextel Communications, Inc.
Dow, Lohnes & Albertson, PLLC
1200 New Hampshire Avenue, N.W.
Washington, D.C. 20036

Paul Summers
Leigh Ann Roberts
Office of the Attorney General
Consumer Advocate & Protection Div
P.O. Box 20207
Nashville, TN 37202

Mallory Duncan
Elizabeth Treanor
National Retail Federation
325 7th Street, N.W., Suite 1100
Washington, D.C. 20004

Ian Volner
George Constantine
CMOR
Venable, Baetjer, Howard & Civiletti
1201 New York Avenue, N.W., Ste. 1000
Washington, D.C. 20005

Armand Cosenza, Jr.
National Association of Mortgage
Brokers
8201 Greensboro Drive, Suite 300
McLean, VA 22102

Ian Volner
Heather McDowell
The Direct Marketing Association, Inc.
Venable, Baetjer, Howard & Civiletti
1201 New York Avenue, N.W., Ste. 1000
Washington, D.C. 20005

effective database development and maintenance designed to address fraud and privacy concerns.

As a result, LSSi observes that, should the Commission decide to move ahead with development of a national do-not-call database, it should endeavor to establish a single, comprehensive database that is simple for both subscribers and telemarketers to use. In that regard, the Commission should work cooperatively with the Federal Trade Commission to establish one, not two, databases; and the task of managing that database should fall to the agency with the broadest mandate from Congress, the Commission

DISCUSSION

I. CONTRARY TO THE SUGGESTION OF SOME COMMENTERS, COSTS OF ESTABLISHING AND MAINTAINING THE DATABASE SHOULD NOT BE EXCESSIVE.

Several commenters allege that a national do-not-call list will be too costly to set up and administer. MBNA America states that it has seen no evidence to indicate that the cost would be any less than the \$20 to \$80 million that the Commission initially estimated in 1992.⁷

MasterCard echoes these concerns, noting that many commenters to the FTC's proposal for a national do-not-call database believed that such a database would cost significantly more than the \$5 million originally estimated.⁸ Both MBNA America and Mastercard note that it is difficult to estimate cost in the absence of a proposal for how the database would operate.⁹

⁷ MBNA America Comments at 9

⁸ Mastercard Comments at 3-4; Federal Trade Commission, Notice of Proposed Rulemaking, *Telemarketing Sales Rule*, 67 Fed. Reg. 4492 (Jan. 30, 2002) ("FTC NPRM").

⁹ MBNA America Comments at 9; Mastercard Comments at 3.

Sharon J. Devine
Kathryn Marie Krause
Qwest Services Corporation
1020 19th Street, N.W., Suite 700
Washington, D.C. 20036

Douglas Brandon
AT&T Wireless Services, Inc.
1150 Connecticut Avenue, N.W.
4th Floor
Washington, D.C. 20036

Suzanne Toller
Rebecca Reed
AT&T Wireless Services, Inc.
Davis Wright Terner LLP
One Embarcadero Center, Suite 600
San Francisco, CA 94111

Norina Moy
Richard Juhnke
Jay C. Keithley
Sprint Corporation
401 9th Street, N.W., Suite 400
Washington, D.C. 20004

Karen Reidy
WorldCom, Inc.
1133 19th Street, N.W.
Washington, D.C. 20036

Joe Waz
Comcast Corporation
1500 Market Street
Philadelphia, PA 19102

Peter Cassat
Comcast Cable Communications, Inc.
Dow, Lohnes & Albertson, PLLC
1200 New Hampshire Avenue, N.W.
Washington, D.C. 20036

Maury Kauffman
The Kauffman Group, Inc.
6120 N. Camino Esquina
Tucson, AZ 85718

Robert Corn-Revere
Ronald London
American Teleservices Association
Hogan & Hartson, L.L.P.
555 13th Street, N.W.
Washington, D.C. 20004

Mark Edwards
The Broadcast Team, Inc.
9 Sunshine Boulevard
Ormond Beach, FL 32174

Robert V. Arkow
Californians Against Telephone
Solicitation
P.O. Box 1782
Canyon Country, CA 91387

William Raney
Copilevitz and Canter, LLC
423 W. Eighth Street, Suite 400
Kansas City, MO 64105

Jodi Bair
Public Utilities Commission of Ohio
Public Utilities Section
180 E. Broad Street, 9th Floor
Columbus, OH 43215

Ronald Zebeck
Metris Companies, Inc.
10900 Wayzata Boulevard
Minnetonka, MN 55305

LSSi agrees with MBNA America that the Commission should study the cost of development and maintenance of the proposed national do-not-call list.¹⁰ However, based upon its experience in the industry, LSSi expects that the results of any such study will reveal that technological advances have significantly reduced the costs for database development and management. In its Initial Comments, LSSi noted that cutting-edge technologies, like Interactive Voice Response (“IVR”), enable database managers to gather, maintain and utilize large amounts of data efficiently and inexpensively.” Moreover, telecommunications companies and directory assistance providers currently receive large amounts of information on an automated basis from local exchange carriers, including assignment, disconnect and reassignment information and area code changes;” this information will be integral to the maintenance of the proposed national do-not-call database, and the fact that it is currently automated for other purposes will keep costs to a minimum.¹³

Moreover, there are steps that the Commission may take in designing the database to minimize costs over both the short- and long-terms. The bulk of the expense associated with the proposed national do-not-call database will be incurred in the set up and registration processes. Such expense may be minimized by (1) providing subscribers with the ability to register via the Internet, and (2) requiring regional rollout of telephone registration. Permitting subscribers to use multiple means to register for the proposed do-not-call list will minimize the investment required in any particular method (i.e., telephone registration). LSSi would recommend, with the

¹⁰ MBNA Comments at 9.

¹¹ LSSi Comments at 3-4.

¹² LSSi Comments at 6-7.

¹³ See State Attorneys General Comments at 30,

Michelle Carey
Division Chief, Competition Policy Div.
Federal Communications Commission
445 12th Street, S.W., Room 5-C122
Washington, D.C. 20554

Gregg Cooke
Deputy Division Chief, Competition
Policy Division
Federal Communications Commission
445 12th Street, S.W., Room 6-A420
Washington, D.C. 20554

Rodney MacDonald
Federal Communications Commission
445 12th Street, S.W., Room 6-A430
Washington, D.C. 20554

Kelli Farmer
Federal Communications Commission
445 12th Street, S.W., Room 4-C740
Washington, D.C. 20554

Qualex International
Portals II
445 12th Street, S.W., Room CY-B402
Washington, D.C. 20554

Joseph Crouse
MBNA American Bank, N.A.
1100 King Street
Wilmington, DE 19884

James Cregan
Magazine Publishers of America
1211 Connecticut Avenue, N.W.
Washington, D.C. 20036

Russell Schrader
Visa U.S.A., Inc.
P.O. **Box** 194607
San Francisco, CA 94119

Joshua Peirez
MasterCard International
Law Department
2000 Purchase Street
Purchase, NY 10577

Dennis Cuevas
National Association of Attorneys General
750 First Street, N.E., Suite 1100
Washington, D.C. 20002

Michael Altschul
Cellular Telecommunications &
Internet Association
1250 Connecticut Avenue, N.W.
Suite 800
Washington, D.C. 20036

John Goodman
Verizon
1300 I Street, N.W.
Washington, D.C. 20005

Kimberly Wheeler Miller
NeuStar, Inc.
1120 Vermont Avenue, N.W.
Suite 400
Washington, D.C. 20005

Alison Garfinkel
Call Compliance, Inc.
90 Pratt Oval
Glen Cove, NY 11542

appropriate security mechanisms discussed below, permitting subscribers to register via the Internet. Regional rollout of telephone registration will also prevent simultaneous attempted registration of all American subscribers.¹⁴ By keeping the number of consumers attempting to register at any one time to a reasonable number, the Commission will minimize the infrastructure required to accommodate such registration. In LSSi's experience, once the system is established ongoing maintenance and updating will be neither taxing nor expensive.

Finally, LSSi recommends that the database be made self-funding. LSSi envisions one of two operational plans for the proposed national do-not-call database. Either telemarketers will be forced to check their outgoing calls against the national do-not-call database in real time,¹⁵ or telemarketers will be forced to purchase the database and periodic updates in order to "scrub" their calling lists prior to solicitation. In either case, LSSi recommends that the appropriate access fees be established so as to reimburse the original outlay of funds required to develop and implement the proposed system, as well as to provide a funding mechanism for the system on an ongoing basis.

II. THE ACCURACY CONCERNS EXPRESSED BY SEVERAL COMMENTERS ARE UNFOUNDED.

Some commenters expressed concern over the ongoing accuracy of the proposed national do-not-call list. MBNA America points out that, because 20% of all telephone numbers change each year and do-not-call *information* is required to be kept for ten years, approximately **42%** of all numbers on existing do-not-call lists no longer belong to the subscriber that made the original

¹⁴ LSSi estimates that the database will eventually include some 45 million listings, if the database is limited to wireline, and 145 million if wireless numbers are also included in the database.

¹⁵ See, e.g., Call Compliance, Inc. Comments at 3.

CERTIFICATE OF SERVICE

I, Leslie LaRose, do hereby certify *on* this 31st day of January 2003, that I have served a copy of the foregoing via hand delivery and U.S. Mail, postage pre-paid, to the following:



Leslie LaRose

Chairman Michael Powell
Federal Communications Commission
445 12th Street, S.W., Room 8-B201
Washington, D.C. 20554

Commissioner Kathleen Abernathy
Federal Communications Commission
445 12th Street, S.W., Room 8-A204
Washington, D.C. 20554

Commissioner Michael Copps
Federal Communications Commission
445 12th Street, S.W., Room 8-A302
Washington, D.C. 20554

Commissioner Kevin Martin
Federal Communications Commission
445 12th Street, S.W., Room 8-C302
Washington, D.C. 20554

Commissioner Jonathan Adelstein
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Christopher Libertelli
Legal Advisor to Chairman Powell
Federal Communications Commission
445 12th Street, S.W., Room 8-B201
Washington, D.C. 20554

Matthew Brill
Legal Advisor to Commissioner Abernathy
Federal Communications Commission
445 12th Street, S.W., Room 8-B115
Washington, D.C. 20554

Jordan Goldstein
Legal Advisor to Commissioner Copps
Federal Communications Commission
445 12th Street, S.W., Room 8-A302
Washington, D.C. 20554

Sam Feder
Legal Advisor to Commissioner Martin
Federal Communications Commission
445 12th Street, S.W., Room 8-A204
Washington, D.C. 20554

Eric Einhorn
Legal Advisor to Commissioner Adelstein
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

request.¹⁶ In response to this problem, Visa recommends that subscribers be required to reregister every two years in order to maximize the accuracy of the list.” CTIA points out that the accuracy concern will be compounded by the introduction of wireless/wireline number portability, and recommends a per-call and pre-call verification process as a possible solution.¹⁸

MBNA America’s comments assume that phone number changes are not reported to the database administrator. However, as LSSi pointed out in its Initial Comments, it currently receives information on subscriber disconnects automatically from the local exchange providers.” If such information were utilized by the database administrator, each time that a person changed telephone numbers the previous telephone number would automatically be removed from the database. This use of existing technology and information would minimize the accuracy problem as described by MBNA America, as automatic removal of disconnects would require only those actually changing telephone numbers to reregister.²⁰

To the extent that wireless/wireline number portability becomes a reality, there *is no* reason that such records cannot be marked as wireless or wireline for verification, along the lines of the CTIA recommendation.²¹ LSSi’s directory assistance database has the capacity to add particular new service markers, including whether a number is wireless or wireline, provided that

¹⁶ MBNA America Comments at 9

¹⁷ Visa Comments at 7

¹⁸ CTIA Comments at 1-8.

¹⁹ LSSi Comments at 6.

²⁰ LSSi also noted, however, that no mechanism currently exists that would allow the database administrator to recognize when the disconnect of one carrier and the assignment of another carrier relate to a single subscriber. Until such a mechanism is developed, subscribers must reregister every time that they change carriers or telephone numbers. LSSi Comments at 7.

²¹ CTIA Comments at 6

CONCLUSION

For the foregoing reasons, the Commission should (i) recognize that technology mitigates commenters' concerns regarding the cost and feasibility of a national do-not-call database; and (ii) should it decide to move ahead with development of the national do-not-call database, it should seek to create a single, unified database that consumers and telemarketers alike find easy to use.

Respectfully submitted,

LSSi Corp.

By: 

Christy C. Kunin (ckunin@graycary.com)

Patrick O'Connor (poconnor@graycary.com)

Gray Cary Ware & Freidenrich LLP

1625 Massachusetts Ave., N.W., Suite 300

Washington, DC 20036

202.238.7700

202.238.7701 fax

Attorneys for LSSi Corp

Dated: January 31, 2003

such information is also kept accurately by local exchange and wireless providers. In any case, the number portability question certainly has a technological response, and LSSi would be happy to assist the Commission in determining which response is most appropriate to the circumstances.

III. TECHNOLOGICAL DEVELOPMENTS AND ADVANCED DATA MANAGEMENT PRACTICES SHOULD ALLAY SECURITY CONCERNS.

A number of commenters expressed reservations about the proposed national do-not-call database because of security concerns, including potential fraud in registration and subscriber privacy. Magazine Publishers of America notes that the proposed use of Automatic Number Identification (“ANI”) data as identity verification in the registration process will lead *to* fraud.²² Under the proposed system, any person with access to a subscriber’s phone will ostensibly be able register that subscriber in the proposed database. Moreover, not all telephone companies currently transmit ANI data; subscribers in these regions would be foreclosed from registration on the proposed list.²³ Visa raises another security concern: “[i]dentifying individuals by name and telephone number may disclose unlisted telephone numbers, including, for example, the telephone numbers of individuals seeking to avoid abusive spouses.”²⁴

LSSi believes that a verification system based on ANI data is the most effective and efficient option available *to* the Commission.²⁵ Because, as Magazine Publishers of America points out, not all carriers currently transmit ANI data, the Commission must mandate

²² Magazine Publishers of America Comments at 17

²³ Magazine Publishers of America Comments at 18.

²⁴ Visa Comments at 7.

²⁵ See LSSi Comments at 7.

would inevitably lead to an increasing number of violations of the rules promulgated by one or both agencies. In order to ensure that the proposed national do-not-call database is properly used by those subscribers and effectively restrains telemarketers, the Commission must work with the FTC to establish one national do-not-call database.

It is LSSi's belief that the agency administrator of that combined database should be the agency with the broadest mandate by Congress. Because Congress has granted the FTC only partial authority over telemarketers, while the Commission has been granted fuller authority,²⁸ the Commission should administer the single, unified database.

The success of any eventual national do-not-call database depends in part on the Commission endeavoring to make the database as simple as possible to use. As LSSi described in its Initial Comments, simplicity of use will determine subscriber utilization rates.²⁹ Likewise, simplicity of access will determine the extent to which telemarketers are compliant with the Commission's rules regarding the database. Toward this end, LSSi envisions a subscriber registration process that requires no more than a telephone number and a verification mechanism, and telemarketer access that requires no more than an internet browser and a password.³⁰ This type of simple registration and access will permit the Commission to achieve its goals in relation to the proposed national do-not-call database: enabling subscribers to avoid telemarketing interruptions and promoting compliance with the Commission's rules.

²⁸ NPRM ¶55; 47 U.S.C. §227(c)(3).

²⁹ LSSi Comments at 14.

³⁰ LSSi Comments at 7-9 (describing LSSi's vision of registration in and access to the proposed national do-not-call database).

alternatives. LSSi respectfully recommends that the registration system permit any subscriber whose ANI is not transmitted to register via touchtone input; for rotary dial customers, a voice recognition system should collect the relevant information. In both cases, the system should generate a subsequent call to the phone number registered in order to confirm the requested addition, deletion or modification, as described below. The Commission should also ensure that subscribers are able to register via the Internet. **An** Internet registration alternative will both permit subscribers in regions where ANI is not transmitted another registration option and minimize the investment required to handle traditional telephone registrations.

No reasonable and cost-effective registration method will be a foolproof guard against the perpetration of fraud. However, based on the concerns expressed by Magazine Publishers of America, the Commission may wish to take additional steps to deter fraud in the registration process. For example, after registration, the proposed system may generate an automatic verification call to the number recently registered informing the subscriber that her number has been registered on the national do-not-call list and providing instructions for removal if the registration was unauthorized. The same notification process could be accomplished via an automatically generated letter to the subscriber, although such would significantly increase the cost of the registration process and heighten privacy concerns. Finally, the Cornmission may wish to promulgate tules describing specific penalties for fraud in the registration process.

In addressing Visa's privacy concerns, LSSi agrees with the State Attorneys General that identifying information associated with registration should be limited to the telephone number alone. **A** variety of states with do-not-call lists of their own have been very successful in maintaining subscriber privacy by releasing numbers accompanied by no further identifying

information.²⁶ The Commission may also wish to make telemarketers sign confidentiality agreements.²¹

IV. IF THE COMMISSION MOVES AHEAD WITH THE ESTABLISHMENT OF A NATIONAL DO-NOT-CALL DATABASE, IT SHOULD SEEK TO ESTABLISH A SINGLE, UNIFIED DATABASE THAT IS SIMPLE TO USE.

Should the Commission decide to move ahead with the proposed national do-not-call database, it should endeavor to make the database as comprehensive as possible and exceedingly simple to use for both subscribers and telemarketers. In pursuing a comprehensive database, the Commission should work cooperatively with the FTC to develop a single, unified database to be administered by the agency that enjoys the greater level of authority, the Commission. In making the database simple to use, the Commission should neither require subscribers to go to excessive lengths to register nor excessively burden telemarketers in their endeavors to comply with the Commission's determinations. Through adherence to the twin principles of comprehensiveness and simplicity, the Commission will promote wide use of the database by subscribers and simplify compliance for telemarketers.

The Commission should work with the FTC to establish a single, unified national do-not-call database. The existence and administration of two separate national do-not-call databases—one administered by the Commission and another by the FTC—would be confusing to subscribers and complicate compliance for telemarketers. Confusion on the part of subscribers would diminish the usefulness of the databases as frustration would lead to lower than optimal utilization rates. Complications for telemarketers in complying with two differing regimes

²⁶ State Attorneys General Comments at 30.

²⁷ State Attorneys General Comments at 30.